APPENDIX

Decision of Tax Court

(excluding purely formal parts)

Pursuant to the Opinion of the Court filed May 23, 1963 and respondent's computation of the tax liabilities filed with the Court June 25, 1963, incorporating herein the facts recited in that computation as the findings of the Court, it is

ORDERED and DECIDED: That there is a deficiency in income tax for the year 1956 in the amount of $688.72.

ENTERED July 25, 1963.

/s/ EUGENE BLACK, Judge.

Decision of United States Court of Appeals

(excluding purely formal parts)

PER CURIAM:

William Herreshoff petitions for a review of a decision of the Tax Court of the United States which sustained the determination of the Commissioner that Herreshoff had failed to prove the cost or fair market value of certain documents stolen from him and that a credit made to his account by the trustee of a testamentary trust was taxable income to him. We affirm the decision of the Tax Court.

In April 1956 the building which the taxpayer owned at 253 West 256th Street, Bronx, New York, was broken into and various papers and technical documents which he had accumulated as an engineer during the prior forty-five years and which were stored in the building were either stolen or destroyed. On his 1956 income tax return the taxpayer claimed a deduction of $2,000 for the loss of these documents. The Tax Court sustained the Commissioner's disallowance of this deduction on the ground that the taxpayer had failed to offer any proof of the cost or fair market value of the documents. In the absence of any proof from which the value of the taxpayer's loss could be determined, the Tax Court properly sustained disallowance of the claimed deduction. See *Halle* v. *Commissioner*, 175 F. 2d 500 (2 Cir. 1949). The taxpayer's naked assertion that the documents were worth at least $20,000 did not satisfy his burden of proof.

In his 1956 tax return the taxpayer failed to include the sum of $951.41 which had been credited to him by the trustee of a testamentary trust. In a subsequent amended return he included the sum but failed to pay the additional income tax required by virtue thereof. The Tax Court prop-

erly sustained the Commissioner's notice of deficiency, which had been based on the original return. The taxpayer has raised for the first time on this appeal the claim that facts exist which would indicate that the sum involved was non-taxable income. The decision of the Tax Court may not be attacked on the basis of a claim raised here for the first time. See *General Utilities & Operating Co.* v. *Helvering*, 296 U. S. 200, 206 (1935).

The decision of the Tax Court is affirmed.